

# Background Checks

Licensee Training  
of the DHS

Workforce Background Check  
Unit

# Speakers

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# Legal Reference

Homes  
for the Aged

Public Act 368

MCL 333.20173A

Adult Foster  
Care

Public Act 218

MCL 400.734B

# **Employees required to have full background checks completed**

- Employees, and contractors (or granted clinical privileges for HFA only)
- hired after 4/1/06,
- who have ongoing, direct access
- to residents, or their personal, financial or medical information
- must have a full background check completed.

# Website Requirements

All background checks must  
be completed on the  
[miltcpartnership.org](http://miltcpartnership.org) website.

# Definitions

- **Exclusionary** = Disqualifying = not employable
- **Non-exclusionary**=no exclusionary findings=employable
- **Exempt** = Grandfathered = employed prior to 4/1/06
- **MCL**= Michigan Compiled Laws

# Life Time Exclusions

MCL 400.734b(1)a and MCL 333.20173a(1)a

Reference

42 USC 1320a-7

According to Federal statute an individual is excluded from employment within a HFA and AFC facility if they were convicted of any of the following felonies after 8/21/1996:

1. Health Care fraud by a professional.
2. Patient abuse in a Medicare/Medicaid certified facility.
3. The unlawful manufacture, distribution, prescription or dispensing of a controlled substance.

4. An individual is excluded if they have been found “Not Guilty by Reason of Insanity”.

The following conditions apply:

- The individual is subject to an order by a court.
- The order is placed on the criminal background record.

Per MCL400.734b(1)h and MCL 333.20173a(1)h.

# Felony Exclusionary Time Frames

**All felony exclusionary period are determined from the date the individual completes the terms of sentence. (i.e. parole, probation)**

**Felony conviction can result in 15 year or 10 year exclusionary periods.**

# **Felony 15 Year Exclusions**

MCL 400.734b(1)b and MCL 333.20173a(1)b

1. Felony with intent to cause death or serious impairment of a body function.
2. Felony that results in death or serious impairment of a body function.
3. Felony that involves the use of force or violence.
4. Felony that involves the threat of force or violence.

## 15 Year Exclusions (cont.)

5. A felony involving cruelty or torture
6. A felony involving a vulnerable adult per MCL 400.734b(1)1(b)iii and MCL 333.20173a(1)b(iii).
7. A felony involving criminal sexual conduct
8. A felony involving abuse and neglect
9. A felony involving the use of a firearm or dangerous weapon.
10. A felony involving the diversion or adulteration of a prescription drug or other medication.

# **Felony 10-year exclusion**

MCL 400.734b(1)c and MCL 333.20173a(1)c

**All other felonies.**

# **Misdemeanor Exclusionary Time Frames**

- **All misdemeanor exclusionary periods are determined beginning with the date of conviction.**
- **Misdemeanor convictions can result in 10 year, 5 year, 3 year or 1 year exclusionary periods.**

# Misdemeanor 10-year exclusion

## MCL 400.734b(1)d and MCL 333.20173a(1)d

1. A misdemeanor involving the use of a firearm or dangerous weapon with the intent to injure, the use of a firearm or dangerous weapon that results in a personal injury
2. A misdemeanor involving the use of force or violence or the threat of the use of force or violence
3. A misdemeanor involving a vulnerable adult  
MCL 400.734b(1)1(b)iii and MCL333.20173a(1)b(iii)
4. A misdemeanor involving criminal sexual conduct

# Misdemeanor 10-year exclusion cont.

5. A misdemeanor involving cruelty or torture
6. A misdemeanor involving abuse or neglect

# **Misdemeanor 5-year exclusion**

## **MCL 400.734b(1)e and MCL 333.20173a(1)e**

1. A misdemeanor involving cruelty if committed by an individual who is less than 16 years of age
2. A misdemeanor involving home invasion
3. A misdemeanor involving embezzlement
4. A misdemeanor involving negligent homicide

## Misdemeanor 5-year exclusion cont.

5. A misdemeanor involving larceny
6. A misdemeanor of retail fraud in the second degree (**shoplifting is retail fraud**)
7. Any misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance ( **a non-sufficient funds check is fraud**)

# **Misdemeanor – 3 year exclusion**

## **MCL 400.734b(1)f and MCL 333.20173a(1)f**

1. A misdemeanor for assault.
2. A misdemeanor of retail fraud in the third degree
3. A misdemeanor involving use of a controlled substance

# Misdemeanor 1-year exclusion

MCL 400.734b(1)g and MCL 333.20173a(1)g

1. Any misdemeanor involving use of a controlled substance if the person is convicted before the **age of 18**
2. A misdemeanor for larceny or retail fraud in the second or third degree if the individual, at the time of conviction, is under the **age of 16**

# Misdemeanor Assault Categories

- 10 year exclusion-Misdemeanor convictions for aggravated assault or aggravated domestic violence.
- 5 year exclusion-Misdemeanor assault and/or assault and battery, including domestic violence.
- 3 year exclusion-Misdemeanor simple assault or assault (without battery).

# Misdemeanor Controlled Substance Categories

- 5 Year exclusion-delivery of a controlled substance.
- 3 Year exclusion-Possession or use of a controlled substance.
- 1 year exclusion-Use of a controlled substance if the individual was under the age of 18 at the time of conviction.

# EXEMPTED EMPLOYEES

MCL 400.734b(2) and MCL 333.20173a(2)

Individuals are classified as

**exempt/grandfathered**

if they were employed in a facility before  
April 1, 2006

# Exempt Employee cont.

Exempt employees convicted of a disqualifying crime after 4/1/2006,

- are no longer exempt and
- shall be terminated or denied employment.

MCL 400.734b(2) and MCL 300.20731a(2)(a)

# Exempt Employee cont.

This act does not apply to

- an individual who independently contracts with an adult foster care home for work not directly related to the clinical, health care, or personal services of the residents,
- and the duties are not performed on an ongoing basis with direct access to the residents.

# Transfers/New Positions

- If a facility hires a previously exempted employee, a full background check must be completed.
- If a full background check is completed on a previously exempted employee, this law does not require disqualification for convictions prior to 4/1/06.
- If a facility is sold to a new owner, new background checks do not have to be completed on employees who continue employment at the facility.

- All exempt employees (employees employed before April 1, 2006) must be fingerprinted by April 1, 2008.
- Licensees **are** required to complete the background check on the Long-term Care Workforce Website ([miltcpartnership.org](http://miltcpartnership.org)).

At this time,  
you are required to register exempt  
employees on the website.

You will be notified when  
fingerprinting appointments may be  
scheduled.

# **Criminal Penalties for Misuse of Information:**

**MCL 400.734 (10) and MCL 333.20173a(9)**

- Provides punishment for misuse of information—Must keep information confidential—use to only make a hiring decision.
- Guilty of misdemeanor punishable by 93 days or a fine of \$1000 or both (i.e., criminal penalty)

# What Employees Must Self Report?

MCL 400.734b(11)a and MCL 333.20173a(10)a

Requires all employees to self-report:

- Arraignments, convictions, findings of abuse/neglect to the licensee including not guilty by reason of insanity
- Reporting of an arraignment is not cause for termination or denial of employment per the statute

# **Penalties for licensee not complying with requirements to check:**

MCL400.734b(10) and MCL 333.10173a(9)

- Guilty of misdemeanor
  - Imprisonment for 1 year/Fine of not more than \$5,000 or both. (Gross Neglect or Intentional Misconduct, Or Willfully not conducting the checks)

# **Rap-Back System: A New Tool to Assist Employers**

If an employee or contractor is arrested,  
arraigned or convicted of a crime,  
and their fingerprints match prints on file  
with the State Police,  
the MSP will inform the Department,  
who, in turn, will inform the employer.

# Questions?

[WWW.MILTCPARTNERSHIP.ORG](http://WWW.MILTCPARTNERSHIP.ORG)

or

DHS: [ocalcheck@michigan.gov](mailto:ocalcheck@michigan.gov)

(877) 718-5542